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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**  
Case #: PBT - 203640

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on November 6, 2021, under Wis. Admin. Code, sec. HA 3.03, to review a decision by the DHS Bureau of Enrollment Policy And Systems regarding PBT, a hearing was held on December 30, 2021, by telephone.

The issue for determination is whether the Department correctly issued P-EBT benefits to the father of petitioner's children based on membership in his FoodShare (FS) assistance group.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
DHS Bureau of Enrollment Policy And Systems  
1 West Wilson St  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Jason M. Grace  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # ) is a resident of Milwaukee County. She has three minor children. She divorced the father of her children, J.L. Exhibit 1.

2. A Martial Settlement Agreement signed in April 2018 indicates that petitioner and J.L. have joint legal custody of their children. That agreement further indicates that J.L. has physical placement of the children every other weekend from Friday after work until Monday morning and every Tuesday and Wednesday from 5:00 pm – 8:00 pm. Each parent has the right to a two week uninterrupted vacation with the children. Holidays with the children essentially alternate from year-to-year. Petitioner has physical placement at all other times. Exhibit 1.
3. At all relevant times involved here, petitioner did not receive FS. Exhibits 2 and 3.
4. On or about March 28, 2021, P-EBT benefits for the children were issued to J.L. as they were listed in his open FS case at the time. Exhibits 2 and 3.
5. On April 14, 2021, petitioner filed an application for P-EBT benefits for the children. That application was denied as the benefits had already been issued to J.L. Exhibit 3.
6. On June 2, 2021, petitioner filed an appeal with the Division of Hearings and Appeals. Exhibit 6. In response, a hearing was duly scheduled for August 5, 2021. Exhibit 7. A order dismissing petitioner’s appeal was issued on August 9, 2021, as petitioner failed to attend the hearing. Exhibit 5. Petitioner did not request a rehearing or file an appeal.
7. Thereafter, the Department issued additional P-EBT benefits for the children to J.L. on or about June 27, 2021, July 25, 2021, and August 22, 2021. Exhibits 2 and 3.
8. On November 6, 2021, petitioner filed the instant appeal. Exhibit 4.

### **DISCUSSION**

The Pandemic-EBT (P-EBT) program was created in response to the COVID-19 pandemic and the recognized need to provide nutrition to Wisconsin children who would normally receive free and reduced-price school lunch. Due to the pandemic, many children have lost out on this benefit due to the closure of schools. The PEBT program provides EBT benefits to purchase food to children whose schools are closed and who are already enrolled in the federal free and reduced-price lunch program.

The Families First Coronavirus Response Act of 2020 (PL 116–127), as amended by the Continuing Appropriations Act 2021 and Other Extensions Act (PL 116-159), the Consolidated Appropriations Act 2021 (PL 116-260), and the American Rescue Plan Act of 2021 (PL 117-2), provides the Secretary of Agriculture authority to approve state agency plans to administer P-EBT.

Wisconsin’s plan for administering the program was approved by the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) on February 8, 2021. The plan can be found at <https://fnsprod.azureedge.net/sites/default/files/resource-files/Wisconsin-PEBT-SY-20-21-plan-approved.pdf>. The manual for the program is at <https://www.dhs.wisconsin.gov/covid-19/forwardhealth-pebt.htm>.

To be eligible, a child’s school must be closed, and the child must be enrolled in the free and reduced-price lunch program. Many children were identified as meeting these criteria by the department analysis of its existing benefit program enrollees. Other children need to apply for benefits if not identified automatically by the department. All children must be cross-matched with the list of free-and-reduced price lunch enrollees kept by the Department of Public Instruction.

The Families First Coronavirus Response Act, as amended, authorizes states to make simplifying assumptions and use the best feasibly available data to identify eligible school children. Under this authority, the Department issues P-EBT benefits based on the “best available information.” The Department’s procedure for issuing P-EBT is to identify eligible children through a simplified process

using information from the Department of Public Instruction and other sources and then attempt to match each eligible child with a FS assistance group. If the child is identified as a member of an FS assistance group, the child's P-EBT is paid to that FS recipient, using the recipient's existing FS EBT card. When the child cannot be matched to an FS case, the Department issues the P-EBT benefits on a separate EBT card.

In June 2021, petitioner initially appealed the first issuance of P-EBT benefits to the children's father instead of her. However, she later failed to attend the administrative hearing, and her appeal was dismissed. Thereafter, additional P-EBT benefits for the children were issued to the father in June, July, and August 2021. Petitioner then filed her instant appeal approximately three months later seeking to have the benefits re-issued to her.

The Department followed its established benefit issuance process in issuing the children's P-EBT to the FS assistance group of which they were included at the time. The process is consistent with the State Plan approved by the USDA, which controls implementation of the P-EBT program. The father had joint legal custody of the children and partial physical placement. I understand petitioner's frustration as she believes the benefits should be issued to the parent with primary physical placement or at least be split between the parents. However, it is the longstanding policy of the DHA that its administrative law judges do not possess equitable powers. See, *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis.1977). See also, *Village of Silver Lake, Wis. v. DOR*, 87 Wis. 2d 463 (Wis. App. 1978). DHA must limit its decisions to the law as set forth in statutes and administrative code provisions. Based on the record, I can find no legal basis to reverse the P-EBT benefits and re-issue them to the petitioner.

### **CONCLUSIONS OF LAW**

The Department correctly issued P-EBT benefits to the FS assistance group of which petitioner's children were a member.

**THEREFORE, it is**

**ORDERED**

That petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## APPEAL TO COURT

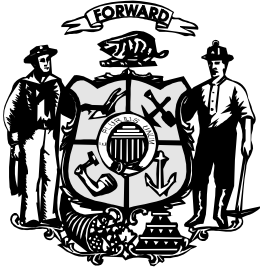
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 21st day of January, 2022



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Jason M. Grace  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 21, 2022.

Dhs Bureau of Enrollment Policy And Systems